

## § 510.23

their industry. If a three-digit code is not listed, employers shall use the applicable two-digit code.

[55 FR 12120, Mar. 30, 1990; 55 FR 12778, Apr. 5, 1990]

### § 510.23 Agricultural activities eligible for minimum wage phase-in.

Agriculture activities eligible for an extended phase-in of the minimum wage in Major groups 01, 02, and 07 have been incorporated into Appendix B—Nonmanufacturing Industries Eligible for Minimum Wage Phase-In. Applicable wage rates are effective retroactive to April 1, 1990. Employers in the sugarcane farming industry (SIC Number 0133) who are subject to Tier 3 wage rates but who have paid wage rates based on Tier 2 wage rates may not take any action to recoup such payments where those actions would have the effect of reducing the wage rate being paid at the time of such recoupment to below that required under Tier 3.

[55 FR 53247, Dec. 27, 1990]

### § 510.24 Governmental entities eligible for minimum wage phase-in.

(a) The Commonwealth government of Puerto Rico has been determined to be eligible for treatment under Tier 2, on the basis of wage data supplied to the Department.

(b) Appendix C of this part contains a listing of Commonwealth government corporations, indicating the phase-in tier which applies. Entities which do not appear on the list are those for which no wage data were supplied. These entities are therefore categorized under Tier 1, and are ineligible for an extended phase-in.

(c) Appendix D of the part contains a listing of municipalities, indicating the phase-in tier which applies. Municipalities categorized under Tier 1 are those which failed to supply wage data.

(d) Employees of municipalities who have reason to believe that the municipality by which they are employed has been incorrectly categorized, e.g., categorized under Tier 3 instead of Tier 2, may no later than June 1, 1990, file with the Administrator a petition for review. The petition shall be accompanied by any information the em-

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ployee may have to support a determination that the municipality is incorrectly categorized. In the event the Administrator determines that a tier other than that listed in appendix D of this part applies, the affected municipality shall be liable for retroactive payment of any back wages found to be due.

(e) Certain employees of municipalities or government corporations in which the average wage is less than \$4.00 per hour are eligible to be paid under Tier 4, rather than Tier 3. Tier 4 applies only to those employees employed by municipalities or government corporations who are principally engaged in one or more of the “traditional” functions listed in § 510.24 (a) or (b). All other employees of such entities must be paid in accordance with Tier 3.

[55 FR 12120, Mar. 30, 1990; 55 FR 12778, Apr. 5, 1990]

### § 510.25 Traditional functions of government.

(a) Section 6(c)(4) of the Act, as amended, limits the six-year phase-in of the statutory minimum wage (“Tier 4”) to those employees with an average wage of less than \$4.00 per hour who were brought under minimum wage coverage “pursuant to an amendment made by the Fair Labor Standards Amendments of 1985.” The Department has interpreted this language as referring to section 2(c) of the 1985 FLSA Amendments, which provided for deferred liability for minimum wage violations (until April 15, 1986) “with respect to any employee who would not have been covered under the Secretary’s special enforcement policy” published in 29 CFR 775.2 and 775.4. The latter subsection listed those functions of State or local government which were determined by the Supreme Court’s ruling in *National League of Cities v. Usery*, 426 U.S. 833 (1976) (subsequently overruled by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985)) to be integral operations of the governments in areas of traditional governmental functions. The listed “traditional” functions included the following:

- (1) Schools.
- (2) Hospitals.